

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

<b>IN RE: BPS DIRECT, LLC and CABELA'S, LLC, WIRETAPPING</b>	<b>MDL NO. 3074 2:23-md-03074-MAK</b>
--	---

---

**DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF  
THEIR MOTION TO DISMISS**

Defendants hereby submit the attached supplemental authority in support of their Motion to Dismiss Plaintiffs' Consolidated Class Action Complaint (ECF No. 54) (hereinafter referred to as the "Motion").

1. Defendants filed their Motion on September 5, 2023. Plaintiffs have yet to file their opposition to Defendants' Motion.
2. In their Motion, Defendants argue, among other things, that Plaintiffs' claims stemming from Defendants' alleged use of session replay technology should be dismissed because Plaintiffs lack Article III standing. *See* ECF No. 54-1 at 3-5.
3. In *Straubmuller v. JetBlue Airways Corp.*, 2023 WL 5671615 (D. Md. Sept. 1, 2023) (Ex. A), the United States District Court for the District of Maryland dismissed claims premised on allegations, similar to those here, of the defendant's use of session replay technology because the plaintiff "failed to establish an injury in fact necessary for Article III standing." *Id.* at \*5.
4. In *Adams v. PSP Group, LLC*, 2023 WL 5951784 (E.D. Mo. Sept. 13, 2023) (Ex. B), the United States District Court for the Eastern District of Missouri similarly dismissed claims based on the defendant's use of session replay technology for lack of Article III

standing, noting the recent trend of courts finding a lack of standing for session replay claims.

*Id.* at \*7 n. 4.

5. In *Jones v. Bloomingdales.com, LLC*, 2023 WL 6064845 (E.D. Mo. Sept. 18, 2023) (Ex. C), the United States District Court for the Eastern District of Missouri noted the *PSP Group* order discussed above and issued a *sua sponte* opinion finding that the plaintiff lacked standing to bring her claims based on the defendant's use of session replay technology.

September 21, 2023

Respectfully Submitted,

By: /s/ Jennifer A. McLoone

Erin (Loucks) Leffler (PA ID No. 204507)  
Shook, Hardy & Bacon L.L.P.  
Two Commerce Square  
2001 Market St., Suite 3000  
Philadelphia, PA 19103  
Phone: (215) 278-2555  
Fax: (215) 278-2594  
eleffler@shb.com

Jennifer A. McLoone (admitted *pro hac vice*)  
Shook, Hardy & Bacon L.L.P.  
201 South Biscayne Boulevard  
Suite 3200  
Miami, FL 33131-4332  
Phone: (305) 358-5171  
Fax: (305) 358-7470  
jmcloone@shb.com

*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I, hereby certify that on September 21, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of each such filing to all CM/ECF participants.

*/s/ Jennifer A. McLoone*

Jennifer A. McLoone